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Letter dated 25 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached supplementary report from Kenya submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 12 March 2003 from the Permanent Representative of Kenya to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to submit to you the second report by the Government of Kenya prepared pursuant to Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Bob F. **Jalang'o**
Ambassador
Permanent Representative

Enclosure

REPORT OF THE REPUBLIC OF KENYA TO THE COUNTER-TERRORISM COMMITTEE PURSUANT TO SECURITY COUNCIL RESOLUTION 1373 (2001) *

The position of Kenya on the fight against terrorism is well elaborated in her initial report to the Counter Terrorism Committee submitted in 2001. Kenya strongly condemns acts of terrorism in all their manifestations having suffered direct impact of terrorism on 7th August 1998 and 28th November, 2002.

As a country Kenya is taking various legislative and executive measures to ensure compliance with Security Council Resolution 1373 (2001) and also to enhance global implementation of this resolution.

LEGISLATIVE ACTION

After the September 11, 2001 terrorist attacks in the United States of America, Kenya realized that the existing legislative framework could not effectively deal with the various aspects of terrorism.

The Government has therefore embarked on the enactment of anti-terrorism legislation. The office of the Attorney-General has prepared a Counter-Terrorism Bill which is set to go to Parliament for debate soon while the Anti Money Laundering and Proceeds of Crime Bill 2003 is being finalized.

Further there is a move to harmonize other existing legislation with the proposed Anti-Money Laundering and Proceeds of Crime Bill. The statutes to be reviewed include the following:-

- Banking Act (Cap. 488)
- Narcotic Drugs and Psychotropic Substances (control) Act No. 4 of 1994.
- Fugitive Offenders Pursuit Act (Cap. 87)
- Extradition (contiguous and Foreign Countries) Act (Cap. 76)

* Additional enclosures are with the Secretariat and are available for consultation.

- Extradition (Commonwealth Countries) Act (Cap. 77)
- Capital Markets Authority Act (Cap. 485 A)
- Insurance Act (Cap. 487)
- Official Secrets Act (Cap. 187)
- Criminal Procedure Code (Cap. 75)
- Penal Code (Cap. 63)
- Civil Procedure Code (Cap 21)
- Evidence Act(Cap.80)

EXECUTIVE ACTION

The Central Bank of Kenya has put in place administrative measures to deal with the identification, tracing and freezing of financial assets belonging to persons identified with terrorist activities and money laundering.

A multi disciplinary National Anti-Money Laundering Task Force (NTF) to assist in implementing the resolutions of the UN Resolution 1373 (2001) was formed in February, 2002 with Representatives from the following institutions:-

Central Bank of Kenya

Ministry of Finance (Treasury)

Police Headquarters

National Security Intelligence Services

Attorney General's Chambers

Kenya Revenue Authority

Kenya Bankers' Association

Commissioner of Insurance

Immigration Department

Ministry of Trade & Industry.

The Anti-Money Laundering Task Force has been instrumental in the drafting of the Anti-Money Laundering and Proceeds of Crime Bill. The following provisions have been included in the Bill:-

(a) Modalities for tracing, seizing and freezing suspected money laundering accounts.

(b) A procedure for the confiscation of proceeds of crime, including proceeds of money laundering once the crime has been established.

(c) Outlawing of maintenance of anonymous banks accounts.

(d) Requirement for mandatory reporting of any suspicious transactions.

As a stopgap measure before the enactment of Anti-Money Laundering and proceeds of Crime Bill, the Central Bank of Kenya issued prudential regulations on money laundering to all financial sectors which took effect on 1st October, 2000. These regulations are founded on the policy of "know you customer' and mandates financial institutions to report any suspicious activities or transactions to Central Bank of Kenya.

The enactment of the Banking Amendment Act 2001 has facilitated the sharing of information amongst Banks and with Central Bank. The Central Bank of Kenya has also continued with special inspection programmes to detect any terrorist accounts with all the financial institutions.

The Task Force is working on a proposed programme to sensitize policy makers, legislators and the general public on the need to

combat money laundering and financing of terrorism. An Anti - Terrorism Unit consisting of officers from all security agencies has been established effective February,2003.

INTERNATIONAL EFFORTS

Kenya supports international efforts aimed at combating terrorism.

Kenya has ratified all the twelve international Conventions on terrorism as well as the OAU Convention on the Prevention and Combating of Terrorism.

Kenya is collaborating closely with other countries within the following programs:-

(a) Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).

(b) East Africa – Head of Narcotics and Drug Committee Protocol.

(c) Interpol sub-regional Bureau for Eastern Africa.

DIFFICULTIES KENYA IS FACING

- Kenya may require technical and financial assistance to further enhance her capacity to deal with terrorism related risks.

COMMENTS IN RELATION TO THE SPECIFIC QUESTIONS POSED BY THE COUNTER TERRORISM COMMITTEE (CTC)

OPERATIVE PARAGRAPH 1

Sub-paragraph (a) What measures if any have been taken to prevent and suppress the financing of

terrorist acts in addition to those listed in your responses to Question 1 (b) to (d)

- The Government of Kenya acted on the "Terrorist Lists" circulated under the U.S. Executive Order 13224 by directing the security agencies and the Central Bank of Kenya to conduct investigations to find out if any of the listed individuals and Organizations operated any accounts with the financial institutions in Kenya. The Government moved fast to freeze the accounts of AL Barakaat group.

- Kenya participates in the Eastern and Southern Africa Anti-Money Laundering Program (ESAAMLG) and formed a multi-disciplinary National Anti-money Laundering Task Force (NTF) in February, 2002.

- Pursuant to SCR 1373 (2001) the NTF has helped in drafting Anti-Money Laundering and Proceeds of Crime Bill to combat money laundering.

- The Central Bank has put in place mandatory "*Know Your Customer*" policies and prudential regulations on money laundering covering all financial sectors.

- The Central Bank has established firm supervisory control and continuous special inspection programme aimed at detecting terrorists activities in all financial institutions.

Sub-paragraph (b) What are the offences and penalties in your country with respect to the activities listed in this sub-paragraph?

- In the proposed Money Laundering and Proceeds of Crime legislation there is the offence of,

    - Conversion or transfer, possessing or using any property knowing or believing it to be from money laundering proceeds.

- Rendering assistance to another person to conceal terrorists acts.

- Aiding a suspected person to escape legal prosecution.

The penalty for these offences is a minimum of 12 months imprisonment.

Sub-paragraph (c) What legislation and procedures exist to freezing accounts and assets at Banks and financial institutions? It would be helpful if states supplied examples of any relevant action taken.

- The Banking Fraud Investigation Department (BFID) of the Central Bank of Kenya has investigative powers on all suspicious individual and organizations' accounts.

- The BFID can move to court under section 180 of the Evidence Act and the Criminal Procedure Code to obtain a warrant to freeze suspected accounts, for instance the accounts of the Al Barakaat.

- Under the Narcotic and Psychotropic Substances (Control) Act No. 4 of 1994 the BFID can apply to courts to freeze drugs proceeds accounts while under the Civil Procedure Code courts can issue warrants for forfeiture of the suspected funds.

- The Kenyan courts have competent jurisdiction to issue appropriate orders with respect to freezing suspected accounts.

Sub-Paragraph (d) – What measures exist to prohibit listed activities in this sub-paragraph?

The Penal Code Cap. 63 of the laws of Kenya, the Banking law, the proposed Terrorism legislation and the Anti-Money-Laundering and Crime Proceeds of Crime Bill makes it an offence for any individual or organization to open, operate, finance, recruit or assist any person or organization engaged in terrorists activities.

- The Draft Counter Terrorism Bill and the Regulations on Anti-Money Laundering spells out the mechanism for freezing accounts and confiscating assets of suspects.

OPERATIVE PARAGRAPH 2

Sub-Paragraph (a) what legislation or other measures are in place to give effect to this sub-paragraph? What other measures help prevent such activities? In particular what offences in your country prohibit.

(i) **Recruitment to Terrorist Groups**

Under the Penal Code of Kenya Cap. 63 it is an offence for any person to solicit for employment in any organization engaged in activities of a terrorist nature. The Non-Governmental Organization (Coordination) Act also prohibits Non Governmental Organizations from engaging or recruiting persons in activities aimed at promoting or likely to promote terrorism.

(ii) **The Supply of Weapons to Terrorists?**

- Importation, licensing and usage is controlled under the Fire Arms Act Cap. 114. A person cannot own or purchase a gun without a fire arm certificate issued by the fire arms bureau.

- Importation of weapons in Kenya is prohibited and any individual or organization must meet strict conditions to do so. Any person contravening the law is liable to penalty of not less that 15 years.

Sub-Paragraph (b) What other steps are being taken to prevent the commission of terrorist acts and in particular, what early warning mechanisms exist to allow exchange of information with other states?

- The Kenya's investigative and security agencies in collaboration with other international security agencies have continued to share terrorist related information so that preventive measures could be taken.

Sub-Paragraph (c)– What legislation or procedures exist for denying safe haven to terrorists such as laws for excluding or expelling the types of individuals referred to in this sub-paragraph? It would be helpful if states supplied examples of any relevant action taken.

- The Extradition (Contiguous and Foreign Countries Act Cap. 76 and the Extradition (Commonwealth Countries) Act Cap. 77 and the Fugitive Offenders Pursuit Act Cap 87 have provisions for arresting, detaining and deporting suspected criminals.

- Persons found in Kenya illegally are prosecuted, fined/or jailed and deported under the Kenyan penal code. Courts also have powers to endorse warrants to extradict.

- Refugees entering into the country are documented and finger prints taken with a view to establishing connections if any to terrorist activities. They are put in identified camps for instance Kakuma and Dadaab for easy monitoring taking into account the provisions of international law.

- Under the immigration laws of Kenya a foreigner who does not hold a valid travel document, or is suspected to have forged identification documents can be denied entry or deported from Kenya even at the airports.

- There are stringent conditions for issuance of visas. Where there is suspicion, the immigration officials seek verification from the applicants country.

- Issuance of Kenyan passport is also strict. The applicant must produce a Kenyan birth certificate and further investigation is done by the immigration department to establish the authenticity of the application. The process is computerized to avoid forgery.

- Border entry points are manned by immigration officials reinforced by security agencies.

Sub-Paragraph (d) What legislation or procedures exist to prevent terrorists acting from your territory against other states or citizens? It would be helpful if states supplied examples of any relevant action taken.

- Under provisions of the Fugitive Offender Pursuit Act Cap. 84 and Extradition Acts, suspected criminals can be arrested, detained or surrendered as it happened with the 7th August 1998 bomb attack suspects in Kenya.

- The Kenya police and the BFID have power to investigate suspected terrorists finances.

- The proposed Anti-Money Laundering and Proceeds of Crime Bill has provisions for an authorized officer to seize and detain suspicious imports and exports of currency.

- The Financial Intelligence Unit to be set up under the proposed legislation, will have power to track property and with Court Order monitor money transactions of individuals or organizations accounts.

Sub-Paragraph (e) what steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorists acts? Please supply examples of any convictions obtained and the sentence given.

Under the Central Bank of Kenya Regulation No. CBK/PG/12 Money Laundering is defined to include conversion or transfer of money knowingly and the intentional disguising or concealing the true origin of money.

Sub-Paragraph (f) What procedures and mechanisms are in place to assist other states? Please provide any available details of how these have been used in practice.

The Government of Kenya is committed to continuous co-operation with other states in exchanging vital information regarding terrorist threats, and has extradition arrangements with various countries. For instance in 1998, Bomb suspects were extradited to the USA to face trial for terrorist related offences.

Sub-Paragraph (g) How do border control in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery etc?

- There is presence of immigration personnel at the border entry points who check thoroughly travel documents of foreigners entering the country. Where they issue travel documents, the applicant is thoroughly screened.

- These immigration officials have powers to arrest and are supported by security personnel. Incase of any suspect, he is instantly arrested and relevant investigations commenced.

- Before a Kenyan is issued with a travel document, he or she must produce an Identification card and birth certificate To acquire a birth certificate one has to produce a birth notification or written report from the local administration confirming that the person is a Kenyan.

OPERATIVE PARAGRAPH 3

Sub-Paragraph (a) – What Steps have been taken to intensify and accelerate the exchange of operational

information in the areas indicated in this sub-paragraph?

The Kenya Government is committed to the exchange of operational information with other states regarding terrorism, and her security agencies have maintained close co-operation with other international security agencies.

- Kenya has enhanced her efforts to get rid of small arms and light weapons in cooperation with states in the region.

Sub-paragraph (b) – What steps have been taken to exchange information and co-operate in the areas indicated in this sub-paragraph?

Kenya has promoted international co-operative relationships, including information sharing with countries concerned through existing channels among security agencies and through the INTERPOL framework. Kenya has also strengthened its immigration controls and all entry points are manned by trained immigration personnel.

Sub-paragraph (c) What steps have been taken to cooperate in the areas indicated in this paragraph?

- Kenya is actively participating in anti terrorism efforts at both regional and international level. For instance Kenya is party to the Darkar Declaration Against Terrorism adopted on 17th October, 2001 and has often called upon all African states to sign, ratify and implement all anti-terrorism Conventions.

Sub-Paragraph (d) – What are your Government's intentions regarding signing and /or ratifying the Conventions and protocols referred to in this sub-paragraph?

- Kenya has already ratified the twelve international Counter Terrorism Conventions and has also ratified the OAU Convention on the Prevention and Combating of Terrorism attached hereto as an **annex.**

Sub-Paragraph (e) – Provide any relevant information on the Implementation of the Convention, protocols and resolutions referred to in this sub-paragraph?

The Kenya government is in the process of putting in place appropriate domestic legislation to deal with terrorism related issues. The government is also fully committed in honouring its objectives as required in UN Security Council Resolution 1269 (1999) and 1368 (2001).

Sub- paragraph (f) – What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status. Please supply examples of any relevant cases.

The immigration department conducts thorough scrutiny of all refugee seekers to establish their status. Those found qualified are documented and their finger prints taken.

Sub-Paragraph (g) – What procedures are in place to prevent the abuse of refugee status by terrorist? Please provide details of legislation and/or administrative procedures that prevent claims of political motivation being recognized as grounds for refusing requests for extradition of alleged terrorists. Please supply examples of any relevant cases.

Where the beneficiary is found to be engaged or have any links with terrorism activities contrary to the provisions of 1951 *Convention on Refugees article 1 (f), the benefits of non* refoulement principle under paragraph 2 article 33 will cease to apply and the Minister for Home Affairs can withdraw refugee status.